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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Sections 3(n)
and 332 of the Communications
Act)

GN Docket 93-252

Regulatory Treatment of Mobile
Services)

To: The Commission

**COMMENTS OF
PITTENCRIEFF COMMUNICATIONS, INC.**

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EXECUTIVE SUMMARY

Pittencrieff Communications, Inc. ("PCI") generally supports the Commission efforts to achieve regulatory parity between commercial mobile radio service providers that will provide similar services in a marketplace. PCI, which will begin implementation of a wide-area Specialized Mobile Radio ("SMR") network in late 1994, anticipates that it can directly compete with the cellular providers. However, PCI submits that a wide-area SMR licensee will not be have equitable regulatory treatment without the SMR rules being modified by the following means: (1) A defined geographic area should be designated for wide-area SMR systems consistent with the already identified geographic areas for cellular and PCS licensing; (2) Within this defined geographic area, a wide-area SMR operator should be permitted to modify, establish, and relocate transmitter sites without prior Commission approval; (3) Consolidation of spectrum, especially in the rural/suburban areas, should not be constrained by loading requirements as required today; and (4) The Commission should encourage and promote "frequency swaps" to enable wide-area SMR operators to obtain exclusivity of frequencies within its defined service area. Additionally, PCI does not support the proposed CMRS spectrum aggregation cap of 40 Mhz.

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PITTENCRIEFF COMMUNICATIONS, INC.**

Pittencrieff Communications, Inc. ("PCI"), pursuant to Section 1.415 of the Commission's rules and regulations and by counsel, respectfully submits its comments to the Further Notice of Proposed Rule Making adopted by the Federal Communications Commission ("Commission") in the above-styled proceeding ("Further Notice").¹

I. INTRODUCTION

PCI is a leading provider of Specialized Mobile Radio ("SMR") services in the United States, with the majority of its SMR holdings licensed in the 800 MHz band.² PCI provides coverage in Texas, New Mexico, Oklahoma, Arizona, Colorado, and Utah. Both dispatch and interconnect services are provided over its system, with a concentration on mobile telephone service. Like a number of other large SMR

¹ Further Notice of Proposed Rule Making (FCC-100), 59 Fed. Reg. ____ (May 20, 1994).

² Frequencies allocated in 806-821 MHz/851-865 MHz for the provision of Private Radio Land Mobile Radio Services.

companies, PCI has filed applications for wide-area SMR authorizations to convert its current analog system to an advanced-technology, digital service network ("Digital Mobile Network"). The build-out and implementation of the wide-area system will be initiated in late 1994, first in larger metropolitan areas in its coverage area and key traffic corridors linking those areas. This initial build-out should be completed in late 1995.

PCI anticipates that the Digital Mobile Network will enable it to provide enhanced digital wireless communications services in direct competition with cellular and PCS providers. The Digital Mobile Network should permit PCI to expand the availability of related service to include integrated mobile telephone, dispatch, short messaging and data transmission in a single subscriber unit. Based on the type of SMR service PCI provides, it will be reclassified as a commercial mobile radio services ("CMRS") provider.

PCI, in its comments, focuses on the restructuring of the rules to provide regulatory parity between wide-area SMR licensees and cellular and PCS licensees. The Commission must address and provide relief from certain spectrum allocation and licensing issues in Part 90 which result in a significant disparity between the ability of wide-area SMR systems to compete with the more dominant cellular carriers.

II. DISCUSSION

One of the purposes of "regularity parity" is to promote competition in the wireless communications marketplace to ultimately benefit the consumer. In determining whether CMRS licensee are providing similar services and, thus, should be subject to similar regulations, the Commission focuses on the services each licensee will provide

to the end user. PCI anticipates that its Digital Mobile Network will provide substantially similar wireless communications services to the subscriber as that provided by cellular systems today and expected to be provided by PCS in the future. However, even though the services provided may be similar, without Commission action to ensure "spectrum parity" as well as regulatory parity, the wide-area SMR provider may be at a competitive disadvantage to the cellular and PCS operators.

A total of 14 MHz has been allocated the SMR service pool in the 800 MHz band³. The Commission has licensed this spectrum on a channel-by-channel basis with the current rules permitting an applicant to obtain an authorization for the maximum of 5 channels. A licensee of such channels is given exclusive use of the channels in a 70-mile radius, although the Commission's rules provide for co-channel stations to be licensed within this 70-mile radius under certain circumstances. Any relocation of the channels or proposal to change any technical parameters requires Commission approval before any change may be made to the station. Currently, applications for new facilities or for modification to existing facilities are taking more than eight (8) months to be acted upon by the Commission approval.

PCI, like a number of other SMR providers, has consolidated a number of 800 MHz channels and filed for channel re-use of these licensed frequencies in a wide-area

³ Two hundred eighty frequencies (each with a bandwidth of 25 kHz) are allocated to the SMR service pool in 806-821/851-865 MHz band. This band also contains allocation of frequencies to a General Category pool, the Business radio service pool, the Industrial/Land Transportation services pool, and Public Safety services pool. SMR licensees may also license frequencies for SMR use from the other service pool allocations (except for the Public Safety allocation), and conversely each of the other services may license frequencies for non-SMR use from the SMR service pool allocation.

configuration. The geographic service area of a wide-area SMR is solely dependent upon the location of constructed and operation analog stations which the operator is seeking to convert to the more advanced technology. The wide-area SMR applicant/licensee must protect any co-channel licensee which exists within its defined service when attempting to re-use its frequencies. Further, once a wide-area SMR system has been authorized, any modifications to existing base stations or addition of new base stations within the defined area may not be implemented without first obtaining prior Commission approval which may take up to 8 months to process and may ultimately be dismissed because an intervening application filed by a non-affiliated third party applicant which prevents the proposed re-use by the wide-area SMR operator.

This licensing procedure is far more cumbersome than the licensing process which the cellular operator enjoys. The cellular carrier is assigned a large contiguous band of spectrum in a pre-defined geographic area. The cellular licensee, except on the parameter of its service area, need not be concerned with competing applicants preventing re-use of its channels. Nor does the cellular operator require pre-approval for relocation or the addition of facilities or modifications to the technical parameters of an existing station as long as the contours of its service area are not significantly modified. Consequently, the cellular carrier has greater system design flexibility which permits it to modify its system as demand requires. Without a modification to the Part 90 rules, wide-area SMR operators will not have same spectrum flexibility enjoyed by the cellular carrier, and will be placed at a competitive disadvantage should it not be able to achieve "spectrum parity" with a competing cellular carrier.

Accordingly, PCI encourages the Commission to provide relief to the wide-area SMR providers to achieve the regulatory parity required by Congress. PCI believes that this relief may be achieved by four primary means: (1) A defined geographic area should be designated for wide-area SMR systems consistent with the already identified geographic areas for cellular and PCS licensing; (2) Within this defined geographic area, a wide-area SMR operator should be permitted to modify, establish, and relocate transmitter sites without prior Commission approval; (3) Consolidation of spectrum, especially in the rural/suburban areas, should not be constrained by loading requirements as required today; and (4) The Commission should encourage and promote "frequency swaps" to enable wide-area SMR operators to obtain exclusivity of frequencies within its defined service area.

A. Technical and Operational Rules

1. Channel Assignment and Service Area

Modifying channel assignment and service area regulations of the SMR is an absolute requirement to facilitate the conversion from private carrier to commercial mobile radio service provider. The site-specific, channel-by-channel assignment now existing in the SMR service results in an inefficient method of licensing and will place the wide area SMR licensee at a serious disadvantage in the marketplace when competing with cellular and PCS systems.

The Commission must adopt a defined geographic area in which an SMR operator is permitted to develop and operate a wide-area SMR system. Among other methods, the Commission suggests that the wide-area SMR operator self-define its service area and

then be given five (5) years to build out the system. The self-defined service area may have some advantages because of the manner in which wide-area SMR coverage areas have been defined to date. In the past, the geographic service area of a wide-area system is was defined by the location of the currently constructed analog system (the "footprint"). At this late date attempting to set pre-defined boundaries, such as Metropolitan Statistical Areas ("MSAs") as identified in the cellular services and the Metropolitan Trading Areas ("MTAs") identified in PCS, may impose a considerable burden to wide-area SMR applicants/licensees which have invested considerable resources in developing and planning build-out of a system on a self-defined area.

On the other hand, self-defined service areas may cause rampant speculation by persons that do not have the intent or financial resources to build-out a self-defined area. Accordingly, PCI recommends that the Commission identify a defined geographic area. PCI suggests either the MTA or Basic Trading Areas ("BTA"), as adopted in PCS, be used for wide-area SMR licensing. PCI would prefer adoption of MTAs for licensing purposes because it provides a larger service coverage area, and may prevent major modifications from having to made to wide-area SMR systems for which plans have been developed and implementation has begun. Further, the MTA may create a more competitive marketplace as the larger geographic area may result in multiple wide-area SMR providers operating in each area.

Upon defining the geographic area in which the wide-area SMR operator is to be licensed, relief must be obtained so that the wide-area SMR operator has sufficient of its currently-authorized channels to re-use in the geographic area without having to provide

continual co-channel protection within the interior of its coverage area.

At first glance, a re-allocation of the 816-821/860-865 Mhz band for exclusive use of wide-area SMR operators may be seen as the simple answer to a complex question. However, because of the method of past assignment of SMR spectrum and the means by which a number of wide-area SMR providers have aggregated their channels, such an allocation may penalize some wide-area SMR licensees and reward other wide area licensees. Rather than setting aside or re-allocating certain frequencies for wide-area SMR use, the Commission should facilitate channel "swapping" among 800 MHz licensees. This would provide the wide-area SMR operator the flexibility to determine its own channel plan. Channel swapping also would not penalize wide-area SMR operators who through random licensing at the Commission are re-using frequencies not in the 816-821/861-865 MHz band.

Further, PCI opposes any method of re-allocation which would base the number of channels retained by one wide-area SMR operator in the same geographic area as another based on mobile units in operation. In many areas of the country, especially in rural and suburban areas, analog SMR systems may provide more interconnect service than dispatch service because of the end user demand. For example, PCI's system in the less populated areas of Texas provides significant mobile telephone service. The provision of interconnect service reduces the number of subscriber mobile units that one may serve without a reduction to the quality of service on a system. Should the Commission adopt an MTA geographic service area for wide-area SMR systems, an SMR operator providing more rural coverage, where interconnect is a significant part of

the SMR service, may compete for frequencies with an operator which has provided the more mobile-intensive dispatch service in a more populated urban/metropolitan area. Basing re-assignment of frequencies based on a mobile-based test may not result in an inequitable division of frequencies. PCI believes that this mechanism is an arbitrary measure and should not be adopted.

2. Co-Channel Interference Protection

There has been an on-going debate within the SMR industry as to what is the proper interference standard between co-channel stations. Initially, separation between co-channel 800 MHz stations was based on a 40/30 dBu contour model which became a set mileage separation for SMR stations of 70 miles between transmitter sites. As more SMR service was demanded, applicants began engineering in stations less than the set mileage standard ("short-spacing"). Recently, because of the increase in short-spacing applications, the Commission adopted a more conservative 40/22 dBu interference standard for licensing co-channel systems in all 800 MHz services.

PCI supported this more stringent interference standard, but believes that an even stricter standard should be imposed with the implementation of the wide-area SMR systems. From PCI's perspective, there should be no difference in the technical standards in regard to co-channel interference standards imposed on the cellular systems and wide-area SMR systems. Therefore, PCI encourages the Commission to adopt an interference standard based on a 40/17 dBu contour model.

3. Emissions Masks

PCI agrees with the Commission's analysis that the required emissions masks in

the 800 MHz band must be retained. With the number of adjacent channel licensees that may operate in geographic service area, the stricter emission mask for the 800 MHz band should not be modified. Further, PCI does not believe that retaining the emissions mask for the wide-area SMR operator will impact its ability to remain competitive with the cellular service.

4. Antenna Height and Transmitter Power Limits

The Commission seeks comment on whether the restrictions on antenna height and transmitter power limits should be modified, especially to conform the cellular rules and rules governing wide area SMR systems. As discussed in the Further Notice, the reasons for the disparity between the maximum Effective Radiated Power (ERP) for cellular and SMR systems was based on the services being provided. The Commission suggests that as the SMR systems will be providing similar service to cellular that the system configuration will be similar and, therefore, the ERP for wide-area SMR systems should be restricted.

PCI disagrees. Wide area SMR services will not necessarily be configured similarly to the cellular systems. Within a wide-area system, there may be need to retain higher-power systems to continue to provide dispatch services to the various end users. Additionally, because of the different terrain in various regions in the United States, SMR operators require the flexibility to have high power stations to provide the most efficient coverage in some areas. Accordingly, PCI strongly urges the Commission not to modify the existing antenna height/ERP standards found in Section 90.635 of the Commission's rules.

5. Modulation and Emission Requirements

SMR licensees, under the current rules, may provide both digital or analog transmissions. As the Commission points out, PCS licensees will have no restriction on modulation or emissions to be used in the system design. PCI believes that will the development of wide-area SMR that permitting SMR operators to have flexibility in system design will promote competition in the marketplace and be in the public interest. Accordingly, PCI recommends that the Commission not place any restrictions on modulation and emissions that an SMR operator on an exclusive channel may use.

6. Interoperability

The Commission seeks comment on whether any Part 90 CMRS licensee should be subject to mandatory interoperability requirements similar to those applicable to the cellular industry. PCI maintains that no interoperability requirements should be imposed on wide-area SMR licensees. The cost of a subscriber unit could be significantly increased should a CMRS provider be required to incorporate the different protocols for provision of non-similar services. Requiring interoperability between CMRS providers may restrict advances in the arena of wireless mobile communications.

7. Construction Periods and Coverage Requirements

Currently, the SMR rules distinguish the length of time a new station must be placed in operation based on the mode of operation, i.e. a trunked system has twelve months to be constructed and placed in operation and a conventional system has eight months to be constructed and placed in operation. Recently, the Commission modified the Part 90 rules to permit SMR licensees to seek an extended period in which to place

its system into operation, but must demonstrate a requirement for such a period. Other services, have various construction periods. The Commission proposes a uniform 12 months for both Part 22 and Part 90 CMRS licensees, as well as for PRMS licensees, except in services where a longer time is specifically authorized.

PCI does not oppose a uniform 12-month period for all stations in Part 22 and Part 90, regardless of whether the system is classified CMRS or PMRS. Further, PCI supports the Commission's proposal to adopt a longer construction period for wide-area SMR systems similar to the construction periods authorized nationwide 220 MHz licensees and certain cellular licensees. PCI believes that an approach similar to cellular would be the most appropriate -- once a defined geographic area has been adopted for wide-area SMR, the SMR operator will have five years to construct its systems within that area. Should the operator fail to construct to provide coverage to all areas within the defined geographic area, then the Commission could relicense the unserved portions.

8. Loading Requirements

PCI strongly supports the elimination of the loading restrictions currently in force in the SMR service. These rules have outlived their usefulness and impose a restriction on the aggregation of channels not found in the cellular service or PCS. Cellular operators, even in the rural areas, have no loading requirements and are required to construct sufficient stations to provide coverage to its service area. This is in sharp contrast to the SMR service where the operator must not only meet construction and operational requirement, but then also must meet loading standards to retain the channels and to expand the system. PCI believes that the better method of spectrum management

is to adopt construction and coverage rules for the provision of wide-area SMR services.

Additionally, the Commission has a sunset provision in connection with the requirement that a licensee demonstrate that a system has met a loading standard at the end of the initial license term or be subject to recovery of channels not considered loaded. For systems licensed after June 1, 1993, this loading requirement no longer applies. In light of the mature nature of the service, PCI supports the immediate elimination of this loading requirement.

9. User Eligibility/Permissible Uses

The Commission proposes to eliminate all restrictions on persons which an SMR reclassified as CMRS may serve. Currently, the Part 90 rules are not unduly burdensome as to which persons a Part 90 may serve -- only foreign governments or their representatives are not eligible. Nevertheless, PCI agrees that SMR licensees reclassified CMRS must be able to serve all persons in order to be free to offer service on a nondiscriminatory basis and be on similar regulatory par with current common carrier licensees.

Similarly, the restrictions on permissible uses for SMR systems reclassified as CMRS must also be eliminated. These restrictions on permissible uses are not applicable to CMRS operation. PCI concurs with the Commission's proposal to eliminate these restrictions.

10. Station Identification

The method of station identification is a source of concern to PCI as it implements its Digital Mobile Network, especially as individual call signs are assigned to each SMR

facility. Having to identify each call sign assigned within a wide-area SMR network may be extremely cumbersome. Therefore, PCI supports the Commission's proposal to permit wide-area SMR licensees to utilize one call sign for identification purposes. However, PCI suggests that the issuance of one authorization for the entire wide-area SMR network would be more beneficial and would provide notice to other co-channel licensees as to which call sign a wide-area SMR licensee was identifying itself. Ultimately, when channel exclusivity within a defined geographic area is achieved by the wide-area SMR licensee, PCI recommends that the station identification requirement be eliminated for wide-area SMR systems.

B. Licensing Procedures

1. Public Notice Requirements

The Communications Act requires all common carrier applications to be placed on public notice (except for those application seeking minor modifications). Under the current Part 90 application procedures, every application filed by a Part 90 CMRS provider would be required to be placed on public notice and be subject to a petition to deny. This result would be unduly burdensome to wide-area SMR licensees and could increase the already lengthy processing time for these applications.

The public notice requirement for cellular licensees or other Part 22 licensees is not as burdensome because certain relocations of facilities, additions of base stations, and changes to technical parameters of existing facilities are considered minor modifications and not subject to public notice requirements. Similar changes to wide-area SMR systems must be considered minor to provide similar regulatory treatment. In Part 22,

systems are considered to have defined service areas unlike Part 90 stations. Accordingly, in order to define a minor modification, a service area for Part 90 CMRS stations must be identified.

2. Special Temporary Authority

PCI is aware that Section 309(f) of the Communications Act imposes certain restriction on the issuance of Special Temporary Authority. However, the Commission's rules issued in light of the Section 309(f) are more burdensome than they need be, and without certain relief to the licensing of Part 90 CMRS systems will place wide-area SMR licensees at a significant disadvantage.

As discussed above, SMR licensees must seek Commission approval to make any changes to certain technical parameters of the station and relocate the station. Part 22 licensees do not suffer under the same restraints. A large number of Requests for Special Temporary Authority in the Part 90 services is to permit relocation of stations or relatively minor changes to technical parameters of a system. Unless the Commission permits relocations and changes to technical parameters without prior approval, the stricter standards imposed on obtaining an STA may severely impede provision of SMR service to the public.

3. License Term/Renewal Expectancy

PCI strongly supports the Commission's proposal to establish a ten-year license term for all CMRS licensees and to extend renewal expectancy to Part 90 CMRS licensees. Currently, each call sign assigned to a Part 90 licensee has a different renewal date. Further, on modification to an authorization, the Commission may assign a new

renewal date. Keeping track of the various call sign renewal dates has caused the loss of authorizations for constructed, operating systems. The adoption of a uniform ten-year renewal period should eliminate the administrative burden the wide-area SMR licensee.

4. Assignment/Transfer of Licenses

The Commission proposes to allow assignment or transfer of control of most CMRS licenses upon completion of construction and placing the system in operation, provided that the applicant can demonstrate that the assignment or transfer will serve the public interest, convenience and necessity. PCI agrees that assignment and transfer of control of a license should be restricted until construction and operation of the system has been completed.

C. CMRS Spectrum Aggregation Limit

The Commission has proposed that a spectrum aggregation cap of 40 MHz of CMRS spectrum be imposed. This proposal is based on the Commission's concern that an entity may exert marketplace power by aggregating large amount of CMRS spectrum in a geographic area.

PCI is reluctant to support the proposed spectrum cap, especially in light of the attribution rules associated with the proposal. Wide-area SMR as well as PCS will require a significant amount of monies to build-out the necessary infrastructures to provide the anticipated services. Much of this financing may be through investors, which, for SMR systems, is concentrated in venture capital and mutual funds and/or in the public markets. Although an SMR provider may know which persons have a 5% interest or more in its holding, it may be unable to determine what other holdings such

a person may have in other CMRS licensees within the same geographic market. An attribution rule as proposed by the Commission may discourage investment in these innovative wireless communications services which is contrary to the Commission's goals. Therefore, the spectrum aggregation cap should be higher than 40 MHz and/or the attribution interest should be significantly increased.

Additionally, as discussed above, the historical licensing of the SMR spectrum argues for a different "aggregation value" than cellular or PCS spectrum. As indicated a wide-area SMR operator may hold licenses which may equate to 10 MHz of SMR spectrum in an area, but the licensee may be precluded from re-using the channels in a manner that would represent any marketplace power. Thus, one megahertz of SMR spectrum cannot be considered the same as one megahertz of cellular or PCS spectrum. Therefore, SMR spectrum, for purposes of aggregation levels, must be accorded a lower valuation. PCI suggests that this be at least one-third less than that accorded to cellular spectrum.

D. Finder's Preference Program Modification

PCI submits that the Commission should either eliminate or modify the Finder's Preference Program which exists in the Part 90 rules. The underlying concept of the Finder's Preference Program was extremely attractive -- a means to re-assign channels not in operation when violations of the rules had occurred of which the Commission would not otherwise be aware. However, the Finder's Preference Program has been operating without clear and defined rules which has resulted in stations that are providing SMR service to be placed at risk.

For example, an SMR station may be constructed and operational at the time of the assignment to a new licensee, and the existing licensee may have represented that the station has been operating in compliance with the Commission's rules. Nevertheless, should a Finder's Preference be filed against the new licensee after the assignment has been approved, the license may be cancelled and awarded to the finder, even though the new licensee was unaware of the violation. PCI recommends at a minimum that the Commission specifically shield persons taking assignment of an authorization from the Finder's Preference when the station is constructed and operational at the time of assignment.

Further, should the Commission continue the Finder's Preference Program, PCI suggests that the Commission also provide an "amnesty" program to current Part 90 licensees which may have not constructed their systems in a timely manner but have since placed the stations in operation or where construction of their stations are not precisely at the licensed coordinates. During a suggested 90 day period, Part 90 licensees could disclose such rule infractions and be permitted to modify authorizations

to correct coordinates without being subject to automatic cancellation of the license. This period would provide an opportunity for licensees to cure defects in a license where the underlying facilities are constructed and serving the public.

Respectfully submitted,

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Certificate of Service

I, Patricia E. Edwards, a secretary with the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that on June 20, 1994, I forwarded a copy of the foregoing Comments in response to the Further Notice of Proposed Rule Making in GN Docket 93-252 via hand delivery to the following persons:

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